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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/282,857	03/31/1999	JOSEPH KIMLER	33432	9204

28425 7590 12/26/2001

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EXAMINER

LEVY, NEIL S

ART UNIT PAPER NUMBER

1616

DATE MAILED: 12/26/2001

Please find below and/or attached an Office communication concerning this application or proceeding.



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EXAMINER

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17

DATE MAILED:

This is a communication from the examiner in charge of your application.
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OFFICE ACTION SUMMARY

- ☒ Responsive to communication(s) filed on 11/21/01
- ☐ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

- ☒ Claim(s) 1-20 is/are pending in the application.
- ☐ Of the above, claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-20 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) _____
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

- ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- ☐ Notice of Reference Cited, PTO-892
- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

—SEE OFFICE ACTION ON THE FOLLOWING PAGES—

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Receipt is acknowledged of Request for time, CPA and Amendment, each of 11/21/01.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The basis % is not specified; is it the total composition, the active or something else, it needs to be specified in the claim. So is the "effective amount" unspecified as to what it is effective to do, in claim 16.

Claims 16-20 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The invention as claimed is inoperative; this is a non-aqueous composition--nowhere does the specification teach how to spray this composition.

Claims 1-14, 16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Putter et al 4678774 in view of Knight et al, WO 9427434, Lovell 5187184 and Schaff et al EP 0821876.

See Col. 3; insecticidally effective amounts against (col. 2, lines 65, 66) roaches, ants, termites, etc., of Avermectin, chlorpyrifos, pyrethrine, applicable as sprays, aqueous or non aqueous (line 10, 11) with silicon dioxide carrier emulsifiers, suspending agents insecticide solvent

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(acetone) and adjuvants as required. The instant % is not disclosed; however, col. 3 specifies that any liquid suspension formulation may be employed, and emulsifiers may be included as required.

Knight show the advantage of an abrasive in a solid carrier preparation for insect control-- see Fig. 1, p. 4; abrasives are calcium carbonate, diatomaceous earth (p. 13, lines 14-18). Knight also uses adjuvant compounds; glycols, alcohols, esters (P. 5).

Lovell show insecticides of the instant invention (col. 1, lines 50-57) in solid or liquid, including non-aqueous formulation sprayables. Surfactants are 32% (col. 2, lines 22-27) while inert carriers, kaolin, with abrasives--diatomaceous earth, talc, are 60-95% (line 27-31).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made, desiring to utilize insecticide compositions to use one of Putter, modified is known by one in the art, to incorporate an appropriate amount of Lovell's surfactant, as shown to include 3-20% of an inert carrier composition, with an abrasive silicate--diatomaceous earth, as shown insecticidally effective by Knight, in order to have a sprayable synergistically effective composition to control agricultural insect pests, ants, termites, roaches.

There is no non-obvious and/or unexpected results obtained since the prior art is well aware of the use of insecticides, abrasives, surfactants, and the use of additives for the functionality for which they are known to be used is not a basis for patentability. The selection adjuvants is a result effective parameter determinable by artisan as desired for purposes of treating specific pests, providing ingredient compatibility and controlled release.

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All the critical elements of the instant invention are disclosed. The particular arylpyrrole chlorfenapyri is shown by Schaaf as useful as similar composition, thus inclusive of Lovell's forms.

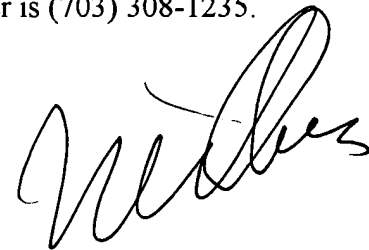
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is (703) 308-2412. The examiner can normally be reached on Tuesday to Friday from 7:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees, can be reached on (703) 308-4628. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3592.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Levy:mv

December 4, 2001



NEIL S. LEVY
PRIMARY EXAMINER